

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 587 of 1997

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

NG PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PARESH UPADHYAY for Petitioner No. 1
MR K.P. RAWAL, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI
Date of decision: 06/07/2004

ORAL JUDGEMENT

1. The petitioner has challenged the order dated 27th February 1996 whereby the correction in the service record carried out in the year 1976 with regard to the date of birth of the petitioner was cancelled. The petitioner has also challenged the order dated 29th August 1996 retiring the petitioner from the service of

the Government with effect from 31st August 1996.

2. The petitioner joined the services of the Government as Sub Inspector in the Directorate of Prohibition and Excise on 17.11.1962. He was thereafter promoted as Inspector and lastly as Superintendent of Prohibition and Excise in the Directorate of Prohibition and Excise in the year 1989.

3. The date of birth of the petitioner as per school leaving certificate is 6.8.1938 and the same was entered in the service record of the petitioner. However, later on it came to the notice of the petitioner that as per the birth register the correct date of birth of the petitioner was 20.5.1940 and not 6.8.1938 as shown in the school leaving certificate. The petitioner, therefore, represented before his appointing authority i.e. the Director of Prohibition and Excise. After detailed scrutiny and on the basis of Government Circular dated 18.2.1974, the Director of Prohibition and Excise passed order dated 2.6.1976 directing that the date of birth of the petitioner may be corrected as 20.5.1940 instead of 6.8.1938. Pursuant to this correction in all the correspondence and documents prepared and published by the Government, including the seniority list, the date of birth of the petitioner was shown as 20.5.1940.

4. The respondent authority passed order dated 27.2.1996 whereby the correction in the service record carried out in the year 1976 with regard to the date of birth of the petitioner was cancelled. Pursuant to the said order the petitioner made a representation to the respondent authority which came to be rejected. Thereafter, since the Government had, vide order dated 27.2.1996, cancelled the correction order dated 2.6.1976 passed by the Director of Prohibition and Excise, 6.8.1938 was considered as the date of birth of the petitioner and accordingly respondent passed an order dated 29.8.1996 retiring the petitioner from the service of the Government with effect from 31.8.1996. Hence the petitioner has challenged the aforesaid orders dated 27.2.1996 and 29.8.1996.

5. Mr. Upadhyay, learned counsel for the petitioner, submitted that the impugned order dated 27.2.1996 cancelling the correction order dated 2.6.1976 was passed without issuing any notice to the petitioner and therefore the impugned order has been passed in violation of principles of natural justice. He submitted that the change in the date of birth was effected by the competent authority pursuant to the Government Resolution

dated 18th February 1974 and after scrutinising all the relevant documents. He has further submitted that after the correction of date of birth, two seniority lists were published by the Director of Prohibition and Excise, wherein the petitioner's date of birth was shown as 20.5.1940. Mr. Upadhyay further submitted that as per the Government Circular dated 18.2.1974, the date of birth as per the birth register is to be accepted for all purposes including the admission to the Government service and therefore the petitioner's date of birth was corrected in accordance with law and there was no earthly reason to cancel the order dated 2.6.1976. Learned counsel relied upon a decision of the Supreme Court in the case of State of Orissa Vs. Binapani Dei, reported in AIR 1967 SC 1269, wherein it is held that even administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice.

6. Mr. K.P. Rawal, learned AGP, for the respondents submitted that the date of birth was corrected by the Director of Prohibition and Excise without any authority and without concurrence of the Government. He relied upon Rule 171 of BCSR, according to which date of birth could be corrected only if the same is crept in the record on account of clerical mistake or the same is obvious clerical error. Mr. Rawal further submitted that in view of the Government Resolution dated 18th February 1974 only the Government has power to correct the date of birth.

7. Though affidavit in reply has been filed on behalf of the respondents, the same is silent about the contention of non-observance of principles of natural justice. It is an undisputed position that the Director of Prohibition and Excise passed the order dated 2.6.1976 directing correction of date of birth after scrutinising the documents produced by the petitioner. No notice of hearing has been given to the petitioner before passing the impugned order dated 27.2.1996. Any order which involves civil consequences must be made consistently with the rules of natural justice. No such steps are taken in the present case which is evident from the impugned order itself and therefore the impugned order becomes bad and illegal.

8. There is no substance in the contention raised by the counsel for the respondent that only the Government has the power to correct the date of birth. According to Circular dated 18th February 1974, in the event of any change in birth dates recorded in the School Leaving

Certificates, etc., birth dates as recorded in the Extracts of Birth and Death Registers should be accepted as correct and final for all purposes including admission into Government service. The said instruction was issued to the concerned authorities. Therefore the appointing authority has the power to correct the date of birth as mentioned in the above Circular. In the present case Director of Prohibition and Excise being the appointing authority had power to correct the date of birth of the petitioner on the basis of the documents submitted before him. Therefore, the contention that the Director of Prohibition and Excise has no power to correct the date of birth cannot be accepted. Moreover, when there is a genuine case coupled with the fact that the date of birth is mentioned in the Birth Register as per the Circular dated 18th February 1974, the respondent cannot take shelter under rule 171 of BCSR. In any case, no reference has been made about the said rule while passing the order dated 27th February 1996.

9. It is also required to be noted that the request for change of date of birth has not come from the petitioner at the fag end of his career. In fact the correction in the date of birth was made in the year 1976 and the impugned order came to be passed only in the year 1996 so that the petitioner could be retired on the very same year.

10. For the foregoing reasons the petition is required to be allowed. Accordingly the petition is allowed. The order dated 27.2.1996 and the order dated 29.8.1996 are quashed and set aside. It is held that the order passed by the Director of Prohibition and Excise dated 2.6.1976 is legal and valid. The respondent shall pay all the consequential benefits of this order to the petitioner within a period of six months from today. However, if the respondents fail to make such payment within the said stipulated period, such amount shall be paid along with interest at the rate of 12% per annum till the payment, and such payment of interest shall be recovered from the concerned officer who will be dealing with the matter for making payment. Rule is made absolute accordingly with no order as to costs.

11. This is a matter where the then Under Secretary Shri H.S. Rathod, Social welfare Department has exercised his power without application of mind and without following the principles of natural justice inasmuch as he has not even bothered to hear the petitioner before passing the impugned order. The resultant effect is that the Government is required to

pay minimum two years' salary to the petitioner because of his negligence. The Secretary, Social Justice and Empowerment Department shall examine the matter and shall recover such amount if ultimately he comes to the conclusion the said Under Secretary was negligent while passing the impugned order. The report of the Secretary shall be reported to this Court.

[K.S. JHAVERI, J.]

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